UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICARDO GIL, JR., ET AL.,	)	CASE NO: 2:16-CV-00071
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
DE LAUNE DRILLING SERVICE, LTD., ET AL.,	)	Wednesday, April 6, 2016 (1:31 p.m. to 1:56 p.m.)
	)	
Defendants.	)	

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs:	TIMOTHY A. STEADMAN, ESQ. MATTHEW FORD, ESQ. Holleman & Associates, PA 1008 W. Second Street Little Rock AR 72201
For Defendants:	KENNETH W. BULLOCK, II, ESQ. Munsch Hardt Kopf & Harr, PC 700 Milam, Suite 2700 Houston, TX 77002
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

Corpus Christi, Texas; Wednesday, April 6, 2016; 1:31 p.m.

(Call to Order)

THE COURT: The Court calls Cause Number 2:16-CV-71, *Gil, et al versus De Laune* -- how do you say that?

MR. BULLOCK: It's De Laune, your Honor.

THE COURT: -- *De Laune Drilling Service*. If the Plaintiff will announce for the record.

MR. STEADMAN: Tim Steadman and Matthew Ford of Holleman & Associates for the Plaintiffs.

THE COURT: The Defense?

MR. BULLOCK: Ken Bullock for the De Laune Defendants.

THE COURT: Okay. For -- we're here on -- Defendants have filed a motion to extend the deadline to respond to the certification issue or motion and a motion to compel discovery. There's some information in the briefing that you-all didn't really confer or not. So if you didn't, I'm going to ask you to do that now.

So what's Defendants' position on that?

MR. BULLOCK: Your Honor, I believe it's indicated in the briefing. From our perspective, we attempted to confer with counsel for the Plaintiffs but for a number of reasons did not receive return phone calls or any kind of response until --

THE COURT: There's been some time, I would think. Maybe you had to get your motion on file for some reason. Have you-all conferred? I mean -- and the reason I ask this -- I mean, really, when you file a motion for conditional certification on the date of service, you-all aren't going to agree to extend some time there? I mean, that's what I'm saying. It seems like some of this could have been resolved.

MR. BULLOCK: Your Honor, Ken Bullock for the Defense. I -- that's -- that would be our desire as well. Obviously, that's the impetus for the filing of our motion and since the filing of our motion and the receipt of opposing counsel's response, there has not been any further comments.

THE COURT: I know. And I'm just going to tell -- because it sounds like you-all might be around for a while and if this is the way we'll be conducting ourselves -- when it says "confer," for my purposes, that means speaking to each other, not sending an email, not, you know, sending a letter or whatever it may be. It means get on the phone where you can work -- I would have thought the issue of hey, you need an extension because we filed the motion to certify on the day we filed the law suit, that --

MR. STEADMAN: Your Honor --

THE COURT: Why did you oppose that?

MR. STEADMAN: Our opposition would be --

THE COURT: Maybe the timing when they wanted it done but the way I read this is we're opposed to it.

MR. STEADMAN: Yes, we're opposed because the purpose of this extension is to allow for, appears substantial discovery. This isn't a situation where it appears the Defendant wants another week or so to gather their information and respond. They want to depose the nine opt-in Plaintiffs before responding. So that actually pushes their response time out at least 30, 45, 60 days.

THE COURT: Okay. So does Defense want to proceed then with your motion in its entirety? I guess we're going to have to address all of it?

MR. BULLOCK: Yes, Judge, that would be fine. Your Honor, as the Court has noted out--

THE COURT: Just -- I'm sorry. Just back to my question -- so did you-all ever really confer? No?

MR. BULLOCK: We made at least three phone calls to opposing counsel, received no response.

THE COURT: So no -- what does the Plaintiff say? No, we never visited?

MR. STEADMAN: There were two phone calls. We sent an email right before the answer was due and said, we don't have time to visit until Thursday or Friday and the response back was, I'd like to share a piece of information because you're going to be disappointed in this case and that was the extent of it.

THE COURT: So no?

MR. STEADMAN: No.

THE COURT: So no?

MR. STEADMAN: No.

THE COURT: Okay. I'm going to let it go forward and we're going to go forward today but please -- I'm admonishing you-all. That's not the way I see conferences going on motions that are going to take up the Court's time. So Defense can proceed.

MR. BULLOCK: Thank you, Judge.

As the Court's noted, the Plaintiffs filed their complaint and also on the same day filed a motion for conditional certification on -- that was on March the 2nd. Defendants were not served until after -- the week after the filing of the original complaint. Once we were retained on behalf of the Defendants in this case, we had sent letters to the opposing counsel indicating our involvement in the case, also made at least three phone calls to opposing counsel trying to, for example, confer with respect to the filing of the Plaintiffs' motion for conditional certification, also the time to schedule the Rule 26 conference and consider discovery in the case.

After receiving no response from opposing counsel except one email which, as the Court can see from the record, was -- at least cast certain aspersions about our attempts to make contact and also have indicated in the Plaintiffs' briefing presume that there was a request for an extension in there but made no attempt to respond. We filed an answer in response to the pleadings on March the 30th and then on March the 31st, the following day, filed this motion for extension of time.

As the Court knows, Rule 6(b) governs motions or requests for extension of time. It would be Defendants' contention with respect to this case that since the motion for conditional certification was filed on the same day as the complaint, they weren't served until after -- a week after their filing. The standard local rule -- Rule Number 7 regarding a typical 21-day response would have required Defendants to respond at least a week in advance of when our responsive pleadings would have been due under Rule 12.

So it's our contention that this request for extension is made before any kind of deadline would start to run. In other words, the deadline for us to respond to the motion for conditional certification would have started on -- when we made an appearance on the case on March 30th. To the extent that the Court has a different interpretation of the --

THE COURT: Yeah, I don't. I don't mind extension because of the -- procedurally it was filed when the lawsuit was filed but I guess the issue is going to be how long -- I mean, what do you need?

MR. BULLOCK: Well -- and, Judge, Docket Number 9 in this case is the Court's initial order for conference which sets the initial conference in this case for June 10th. Mr. Steadman and I had conferred before this hearing with respect to scheduling our Rule 26(f) conference which we are going to conduct in person immediately at the conclusion of the hearing today. The Plaintiffs have served written discovery. We likewise have served written discovery. That, of course, will be getting served today once we conclude our conference.

So my thought, Judge, with the Court's indulgence, is we serve discovery today. Thirty days, the responses are due by May the 6th. Then we have two to three weeks for (indiscernible) to conduct the depositions of the Plaintiffs and

opt-ins during that time after we receive the discovery responses --

THE COURT: And what information do you need on the depositions?

MR. BULLOCK: Well -- and these being merits of discovery, your Honor.

THE COURT: Well, we're not doing merits. I'm just looking at certification probably. If you're wanting discovery, I think it's limited to certification issue for now.

MR. BULLOCK: Okay.

THE COURT: I think that's the way this is usually handled until the Court determines whether it's appropriate to conditionally certify the class and authorize notice.

MR. BULLOCK: To the extent the Court would require then that we would have limited or targeted discovery for conditional certification, the depositions, for an example, would cover things like the similarly situated nature of the claimants and the opt-ins and the Plaintiffs. For example, the Plaintiffs' motion for conditional certification is made on behalf of five Defendants and then of course the other similarly situated but there are four declarations that are included. Three of those declarations are pertaining to one proposed class by the Plaintiff. Only one of the declarations is pertaining to the second proposed class that's been set forth by the Plaintiffs.

So the discovery would include determining what happened to the fifth guy. In other words, why -- there are five Plaintiffs in the case but only four declarations that have been provided so far by the Plaintiffs. Why has that fifth Plaintiff not provided a declaration, one of the virtually identically worded declarations that's been provided by the Plaintiffs? Also determine their --

THE COURT: But why do you need the -- is he part of the four or -- because -- what was the argument, that one of -- there was only one declaration that dealt with a certain group, job description, I guess, and the other four did something else and where does that one go on that we didn't have the declaration for?

MR. BULLOCK: Partly -- and I apologize if I didn't make that clear.

THE COURT: No, you probably did. I probably missed it.

MR. BULLOCK: Thank you, Judge. There are five total named Plaintiffs in the lawsuit. Plaintiffs in support of the motion for conditional certification provided four declarations. So we would like to take the deposition of the fifth Plaintiff who did not provide a declaration to determine whether that individual -- that fifth Plaintiff that does not give a declaration, does he contend that he's part of the first class or the second class that proposed to file a claim?

THE COURT: And I guess you won't get that in interrogatory -- or the written discovery?

MR. BULLOCK: Well, Judge, I believe we're entitled to take a deposition to be able to determine what his job duties were --

THE COURT: Well, I need to limit the deposition to what is necessary and if we don't need a deposition, we don't do it if we can get -- you know, if we're going to get the information through written discovery or through your records that you have to figuring out who these people are -- I guess I'm just asking, why can't you get that? I mean, why do you need to depose the people? I'm not saying you don't and I'm not saying I've never granted depositions before in a certification when we're dealing with a conditional certification issue but it's not just, oh, we just want to go see. It's like, I really need this information to determine if it's appropriate to go forward with notice and, you know, to conditionally certify the class.

MR. BULLOCK: And, your Honor, I'll try to respond to that point directly. And as indicated, there are two proposed classes that the Plaintiffs have sought to be initially certified in their motion and though the declarations that have been provided -- so far of the four, three of those go to one of the proposed classes. Only one declaration goes to the second proposed class and so our --

THE COURT: And the other one, we don't have?

MR. BULLOCK: And that's --

THE COURT: Okay. So why didn't we provide that declaration from that Plaintiff to at least give them some information on who the representative Plaintiffs are?

MR. STEADMAN: Candidly, your Honor, I was able to meet with the first four in person and the fifth person signed up later and wanted to get it on file to stop the tolling in the statute of limitations before we filed our motion, which is the only reason that there's no declaration from the fifth guy. He -- his name -- who is -- Angel Arredondo. He is a tool pusher.

THE COURT: All right. Mr. Bullock, do you want to proceed?

MR. BULLOCK: Yes, Judge. And so the -- again, I -- it would be -- from our perspective, I believe it would progress to litigation if we were able to do merits discovery but with the Court's acknowledgement that at this point, the Court wishes to limit any discovery that may be allowed to target it to simply on the issues of conditional certification. Then with that in mind, our ideas for the discovery would be simply the factors that are necessary for the conditional certification analysis under the U-step Lizardi approach. So the idea is substantially sound --

THE COURT: Right. But we're usually looking at kind of job duties, descriptions or they were -- and you would not have that information, I guess?

MR. BULLOCK: Well, Judge, I believe we'd like to have the opportunity to ask the different named Plaintiffs and the opt-ins as well because the consents that have been filed by the opt-ins at least at this point provide no other information other than the fact that they wish to consent to join the collective action.

So there's not been provided any kind of detail about what -- which of the two proposed classes that they would fall into and so those issues -- and then as a matter of a little bit more specific detail, the two proposed classes that are sought by the Plaintiffs involve a group of drilling hands and then also a group of tool pushers and for lack of a better word, the drilling hands are the workers and the tool pushers are kind of the site foremen -- job foremen, I guess, may be a way to describe that.

But often those job duties will not necessarily be so different between the two positions and then at each individual drill site, depending on how that drill site is run by the particular well owner or operator and that well owner or operator's representative, the company man, at the well site. All those duties may be completely different at each individually -- each individual different drill site.

And so our opportunity to take deposition of these named Plaintiffs and then opt-in claimants will give us an opportunity to determine and confirm, I believe, that at each individual drill site that they worked at over a course of two to three years -- each one of them has been conducted different -- in a different manner. They've done different jobs. They've had different responsibilities at each different level and each different well site.

So I believe those are all issues, for example, that we would like to pursue and I think that we're entitled to pursue that directly relate to the issue of conditional certification. Obviously, it's a similarly situated analysis.

THE COURT: Okay. Mr. Steadman?

MR. STEADMAN: Yes, your Honor. And just to back a little up just a touch then, the Plaintiffs are drilling hands and tool pushers that worked for a drilling company called “De Laune.” There currently are three tool pushers, Pablo Alaniz, Angel Arredondo, Daniel Trevino who had filed consents to join as tool pushers and there are seven drilling hands, Ricardo Grill -- Gill, Lucas Lopez, Juan Ortiz, Jacob Adolfo Del Garza -- De La Garza, William Nash, Marcos Joel Hernandez and Jonathan Gonzalez.

In addition, Pablo Alaniz, Angel Arredondo and Daniel Trevino each also worked as drilling hands but we believe outside of the statute of limitations going back further than three years.

Now, based on the information provided in the answers, drilling hands and tool pushers appear to be discrete jobs at De Laune. They had a typical schedule of working twelve days on and two days off. That was admitted in the answer. Plaintiffs allege that these are pretty long days, 16 to 18 hours a day, but there’s no dispute that drilling hands and tool pushers were not paid overtime.

At least with regards to the four named employees -- or I’m sorry -- excuse me -- the named Plaintiffs, there’s no dispute that those individuals were employees of De Laune during the period -- during the statutory period as opposed to being independent contractors. There likely will be some dispute -- drilling hands unload and roll pipe, operate equipment and clean. Tool pushers are foremen. Their -- we allege that their primary duty is to operate the drilling rig.

With regard to variation among the individual drill sites, it's still a drill site. De Laune is providing similar services on all on these sites and I believe every Plaintiff worked at multiple drill sites. We don't believe that there will be much variation at all between their job duties. The fact that -- particularly with the drilling hands who are the workers, the issue in this case is going to be what exemption can they qualify for. That's the single unifying policy. There is a position called "drilling hands." There is a position called "tool pushers."

The question in this case is, are duties individuals perform exempt job duties? And these individuals -- although there might be variation from job site to job site, every individual is also working on different job sites. If that were the standard, then just for an example, Ricardo Grill -- Gil wouldn't be similarly situated to himself because he might clean on one job site and weld on another and operate a jack hammer on another. But all of that is manual labor. That would be what we contend his primary duty is and that there's no exemption that would qualify him -- that he would qualify for.

To -- you know, from our perspective, the Defendant should already have all this information. They keep records on who works for them. They issue the paycheck. They keep records of the hours worked. It should not be that difficult to determine which ones were hired to be drilling hands, which ones were hired to be drill pushers. De Laune is going to have a position about the individual job duties. They don't need to take depositions of the Plaintiffs to do that. They know their business. They've already obviously raised those issues.

We believe we would have been opposed to a short extension to respond to conditional certification to help gather some of this material. They should respond to conditional certification before we decide whether there's any areas where there's going to be substantial disagreement that might warrant further discovery.

And I'm happy to answer any questions but in our perspective, this is pretty simple.

THE COURT: All right. Final comments?

MR. BULLOCK: Yes, Judge, thank you.

I just would like to say that the list of named Plaintiffs and then the opt-in Plaintiffs that counsel did provide and provide notice of what class that they -- which of the two classes they were to belong to -- like I said, the consents that we've been provided don't have any of that information and some of these individuals did work in two different jobs for De Laune perhaps during the relevant two-year, which we think is appropriate, limitations period during this time.

And so given the variation which can occur at each of these different well sites and particularly depending on what type of duties and what's happening on that well site, there is, I believe, a question about whether there is truly a similarly situated analysis that deserves some attention to specific discovery before we get to the motion for conditional certification.

So our thought and reason in filing the motion to extend the days that -- as the Court knows, we have the initial conference on June the 6th and we've -- both sides have served written discovery today. So if we have 30 days to respond to that, then that gives us two to three weeks to do some depositions after that and then a week to provide briefing. I believe we have the issue ripe for the Court's consideration at the June 6th initial conference. It -- and that was --

THE COURT: But if you're going to be filing everything right then, you know, I'm not necessarily going to be reading it right then. So if you think you'll file it at midnight on June 5th, then I'm not going to be ready by June 6th.

MR. BULLOCK: And I apologize. I realized it --

THE COURT: No -- well, no, it's just that people do that all the time and I'm like, I have a thousand cases. You know, they want to submit something. They want me to read it right before the hearing.

MR. BULLOCK: Certainly the reason we are here is the most important thing but -- and I appreciate the Court's comments there. I mean, if, for example, the Court would like to establish a briefing deadline that gives the Court a week or perhaps two before the June 6th initial conference or maybe reschedule the June 6th initial conference back a week after that, I believe generally during that timeframe since we have both served written discovery, we'll be able to get those responses in 30 days. We'll be able to take some depositions and hopefully confer and work with those -- each other professionally to get that scheduled during that timeframe. I believe we can have that issue ready for consideration by the Court in that -- in the neighborhood of that initial conference date.

THE COURT: All right. The Court's going to grant the motion to extend the time to respond. I'm going to allow them to do some targeted discovery. You are deposing these five named Plaintiffs and it looks like we can get it done within 60 days, correct -- the discovery?

MR. STEADMAN: I don't believe that having -- getting them deposed will be that difficult.

MR. BULLOCK: And if --

THE COURT: Right. It kind of sounded like we were going to wait for the written discovery and then try to get them deposed right after that. That's what it sounded like to me.

MR. BULLOCK: That would be ideal from Defendants' perspective, just so we will have the results of that initial written discovery to use during the depositions, Judge.

THE COURT: So that takes us into early June and then maybe give you a couple of weeks to respond to the motion for conditional certification, Brandy, which would put us where?

THE CLERK: You'd give them two weeks to respond to the motion to certify. That would take us to the 20th of June.

THE COURT: Okay. And then we could have a hearing --

THE CLERK: And then if you want to reset the initial conference, how about July 15th at 1:00 o'clock?

THE COURT: And you-all can argue the motion then?

MR. STEADMAN: That would be fine, your Honor. May I check my phone to make sure --

THE COURT: Yes.

MR. STEADMAN: -- we don't have a conflict with that date?

THE COURT: Yes.

MR. BULLOCK: And, your Honor, just one point of clarification. I understand the Court's ruling, I believe, but I want to make sure that we're --

THE COURT: Okay.

MR. BULLOCK: -- consistent and all on the same page here. Targeted discovery with respect to the depositions and so that means that the depositions will be limited to issues that are in connection with the conditional certification motion?

THE COURT: Yes.

MR. BULLOCK: Okay.

THE COURT: Yes.

MR. BULLOCK: And just so we're clear, the targeted discovery that we're able to take at this point with the deposition of the five named Plaintiffs, that will not preclude our ability to take a full merits deposition --

THE COURT: No.

MR. BULLOCK: -- at a later point?

THE COURT: No. We're just looking at the conditional certification issue.

MR. BULLOCK: Okay.

THE COURT: That's all and you can depose them later on merits depending on, you know, what happens and where we go.

MR. BULLOCK: Okay, thank you, Judge.

MR. STEADMAN: Your Honor, and if I may -- if these five -- we're limiting the depositions to these five, we'd prefer to just present them all at once rather than have them appear twice and they can ask them whatever they want --

THE COURT: Well, that's up to you-all. It's just normally, you know, the way we proceed is -- but if you want to present them for a full deposition, I'm sure the Defense would love to do that.

MR. STEADMAN: I --

THE COURT: So you're agreeing?

MR. STEADMAN: We will absolutely agree to that rather than have a ton of --

THE COURT: Okay. But I'm not -- when I do the conditional certification issue, I'm not looking at merits, right?

MR. STEADMAN: Yes, your Honor.

THE COURT: So don't include that in your response. It'll just give me more to read.

So it sounds -- then what else to address?

MR. BULLOCK: I believe those are the issues that are currently before the Court.

THE COURT: And from the -- anything else from the Plaintiff?

MR. STEADMAN: No, your Honor.

THE COURT: Okay. So I granted the Defendants' motions. We're extending the time to file a response to June -- what did you say, Brandy, June 20th?

THE CLERK: June 20th, your Honor.

THE COURT: I'm allowing some -- I said targeted but if you-all are agreeing to full depositions on these

Plaintiffs, that’s fine to be done within 60 days and then we -- you-all can argue the motion to certify the initial pretrial conference which we have set for --

THE CLERK: July 15th at 9:00 a.m.

THE COURT: Okay. If nothing else from the Plaintiff or the Defense, you can be excused.

MR. STEADMAN: Thank you, Judge.

MR. BULLOCK: Thank you, your Honor.

(This proceeding adjourned at 1:56 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Toni Hudson ______________________ December 14, 2016_

TONI HUDSON, TRANSCRIBER